JANE L. CLINE
Insurance Commissioner

September 2009

WEST VIRGINIA INFORMATIONAL LETTER

NO. 171

TO: All Insurance Companies Licensed to do Business in the State of West Virginia

RE: Debt Cancellation Contracts and Debt Suspension Agreements

The Offices of the Insurance Commissioner ("OIC") routinely receives questions concerning whether debt cancellation contracts or debt suspension agreements are regulated as insurance. In order to provide practical and useful guidance to the insurance industry and to the public at large, this Informational Letter is intended to distinguish between debt cancellation contracts and debt suspension agreements.

Debt cancellation contracts and debt suspension agreements are defined by the United States Department of Treasury as follows:

Debt cancellation contract means a loan term or a contractual arrangement modifying loan terms under which a lender agrees to cancel all or part of a customer's obligation to repay an extension of credit from that lender upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents. 12 CFR 37.2(f).

Debt suspension agreement means a loan term or contractual arrangement modifying loan terms under which a lender agrees to suspend all or part of a customer's obligation to repay an extension of credit from that lender upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents. The term debt suspension agreement does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment, or the bank's unilateral decision to allow a deferral of repayment. 12 CFR 37.2(g).

The OIC does not consider debt cancellation contracts or debt suspension agreements (sometimes collectively hereinafter referred to as "the Contracts"), as defined above, to be insurance products because the Contracts neither require the lender to indemnify another nor require a payment upon a determinable contingency. In other words, the Contracts do not require the lender to reimburse or make a payment to the borrower as a result of the occurrence of a certain event. The Contracts also do not require a third party to reimburse the lender for its loss as a result of the borrower's failure to repay the loan after a certain event occurs. Instead, the Contracts simply require the lender to cancel or waive the borrower's debt upon the happening of a specified event.

WVIL 171



In order to fall outside OIC regulation, the cancellation or waiver of the debt must be directly provided by the lender. A contract in which a third party is obligated to indemnify the lender -- as a result of a specified event that causes the lender to not be repaid by the borrower -- is not a debt cancellation contract or debt suspension agreement. This type of contract is an insurance transaction and is subject to the insurance laws of the State of West Virginia. A third party includes, but is not limited to, a subsidiary or affiliated company of the lender.

If you have a question concerning this Informational Letter, please e-mail your question to <u>Informational.Letters@wvinsurance.gov</u> or call (304) 558-0401.

ss://Jane L. Cline
Jane L. Cline
Insurance Commissioner